

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

ROBERT ANTHONY ALVAREZ,
and **STEVEN JOHN ROBBINS,**
on behalf of themselves and all others
similarly situated,

Plaintiffs,

v.

ELON REEVE MUSK, an individual,
AMERICA PAC, a political action
committee, **CHRIS GOBER,** an
individual, and **CHRIS YOUNG,**
an individual,

Defendants.

Case No. 1:24-cv-01174

Hon. Robert J. Jonker
Magistrate Judge Maarten Vermaat

**PLAINTIFFS' FIRST AMENDED
CLASS ACTION COMPLAINT**

Plaintiffs for themselves and all others similarly situated, by and through their undersigned counsel, hereby assert this class action against Defendants and state as follows:

INTRODUCTION

1. Elon Musk and his organization, America PAC, created a sweepstake that offered tens of thousands of Michigan residents the opportunity to sign up for

a chance to win \$1 million via a sweepstakes tied to their online petition through the America PAC website.¹

2. However, Musk and his PAC never had any intention of awarding the \$1 million to those who signed up, let alone from a random drawing. Instead, they had determined to pre-select only those individuals who they deemed worthy of being selected for the sweepstakes to ensure that any “winner” was aligned with their political views and values.

3. Thus, Alvarez, Robbins and others like them, never had a chance at being “randomly” selected to win the \$1 million dollars.

4. Through the sweepstakes entry process, Defendants obtained valuable personal information from Plaintiffs and putative class members through deception, resulting in damage and liability for the claims pleaded herein.

JURISDICTION

5. This Court has original jurisdiction over the state law claims in this action under the Class Action Fairness Act, 28 U.S.C. § 1332(d), because this is a class action in which: (1) there are 100 or more members in Plaintiffs’ proposed class; (2) at least some members of the proposed classes have a different citizenship from Defendants; and (3) the claims of the proposed class members exceed \$5,000,000 in the aggregate.

¹ <https://petition.theamericapac.org/> (last accessed Nov. 11, 2024).

6. Venue is proper in this district pursuant to 28 U.S.C. §1391(b) as the actions complained of arose within this district as Musk and his PAC marketed and promoted their petition to individuals residing in the district and in fact, did award \$1 million to individuals who reside within this district.

PARTIES

7. Plaintiff Robert Anthony Alvarez is a resident of Kent County, Michigan and a registered voter, and aligns himself with the Democratic Party.

8. Plaintiff Steven John Robbins is a resident of Allegan County, Michigan and a registered voter, and aligns himself with the Republican Party.

9. Defendant Elon Reeve Musk is the founder of America PAC, and upon information and belief is a resident of the State of Texas.

10. Musk funded America PAC, is involved in America PAC's operations, made representations to Alvarez, Robbins and other Michigan residents on behalf of America PAC, and benefits from increased traffic generated by America PAC on the social media platform X, of which Musk is the majority owner.

11. Defendant America PAC is a political action committee "to support candidates who champion Secure Borders, Sensible Spending, Safe Cities, Fair Justice System, Free Speech and Self-Protection," especially the candidacy of former President Donald Trump. *See America PAC.*²

² <https://x.com/america>.

12. Defendant Chris Gober is the former Treasurer of America PAC and upon information and belief is a resident of the State of Texas.

13. Defendant Chris Young is the current Director of the PAC and its treasurer. He is a resident of the State of Texas.

GENERAL ALLEGATIONS

14. On or about October 19, 2024, Musk and his PAC announced the opportunity to win an award of \$1 million to any registered voters from any of identified swing states, which included Michigan.

15. Musk and his PAC further announced that if a registered voter from one of those swing states turned over their personal identifying information (i.e., address, cell phone number and e-mail address), and made a pledge of support for the First and Second Amendments of the U.S. Constitution, they would be eligible to be selected “randomly” to win an award of \$1 million.

16. In fact, at the event in which Defendants made their announcement, three individuals were awarded \$1 million each after appearing to have been “randomly” selected.

17. This sweepstakes was marketed and promoted as an opportunity for any individual who signed the petition to be awarded \$1 million if they were “randomly” selected.

18. In fact, Musk specifically stated at the announcement of this opportunity that:

“We really want to get as many people as possible to sign this petition, so I have a surprise for you. And it's that we'll be awarding \$1 million dollars, randomly, to people who have signed the petition. Every day from now until the election.”

19. The only conditions and/or requirements for a chance to win the award made known publicly were that individuals:

- a. Be registered voters;
- b. Reside in one of the battleground states;
- c. Support the First and Second Amendments; and
- d. Sign the petition.

20. Alvarez and Robbins are registered voters.

21. Alvarez and Robbins reside in a battleground state.

22. Alvarez and Robbins support the First and Second Amendments of the U.S. Constitution.

23. On or about October 27, 2024, Alvarez provided his personal information on the online form as required to indicate his signature on the petition.

24. On or about October 21, 2024, Robbins provided his personal information on the online form as required to indicate his signature on the petition.

25. Alvarez and Robbins believed that there was a chance that they could be randomly selected to win the \$1 million award offered by Musk and his PAC.

26. However, on November 4, 2024, various news outlets online reported that Musk and his PAC's attorneys made representations in the Philadelphia Court of Common Pleas to Judge Angelo Foglietta in which they confirmed that the awarding of the \$1 million dollars was not "random" or by "chance" at all and was, in fact, *predetermined*.

27. During this hearing, Musk, the PAC's counsel and the PAC's Director/Treasurer made several admissions regarding the true nature of the petition, the award of \$1 million, and the *unwritten and unknown* additional terms and conditions for being selected for an award.

28. For example, Chris Gober, an attorney for Musk and the PAC, as well as the PAC's former Treasurer, made the following representations during his opening statement at the hearing:

- a. "You will hear evidence that there was no prize to be won. Instead, recipients must fulfill contractual obligations to serve as spokespersons for the PAC.";
- b. "You will also hear evidence that the recipients are not chosen by chance. They are selected based on their suitability to serve as a

spokesperson for America PAC often due to their personal stories or backgrounds.”

- c. “You will hear testimony today clarifying that while recipients were selected without a preset plan, which is the very definition of randomly, they were not chosen by chance.”

29. After this last representation of the testimony that Musk and PAC would present at the hearing, the presiding judge had the following exchange with Mr. Gober:

“The Court: *So let me get this straight. I think this is the first I’ve heard this. You’re saying this contest is not a sweepstakes because of the various reasons you gave, but this is simply people who say that they’re going to -- they want to act as a spokesperson for America PAC and they basically apply and give their requirements or their ability to do so. And from that group of people, then an individual is selected?*

Mr. Gober: *Effectively, your honor.*

The Court: *I mean, is that what you’re saying?*

Mr. Gober: *I believe so. I want to make sure that the way you restated it, it's clear in my mind. We ask people to sign the petition and refer others to sign the petition.*

The Court: *Right.*

Mr. Gober: *You've heard evidence in instances there are payments that are made in exchange for that. We then take that pool of individuals across the country and we determine which ones of those individuals would serve as an effective spokesperson for our organization. And we enter into a contractual relationship with them to serve as a spokesperson for us."*

30. Mr. Gober further indicated on the record that "we know exactly who will be announced as the \$1 million recipient today and tomorrow."

31. Chris Young, Director and Treasurer of the PAC, while under cross examination by the Philadelphia District Attorney regarding the first recipient of the \$1 million dollar award, confirmed under oath that the recipients are preselected, vetted ahead of time and that the criteria for selection was never made public:

Q. *On the evening of October 19th, or the 20th, you had an understanding how people were going to be selected; isn't that right, sir?*

A. *Well, the individual had already been selected. I guess, I'm confused.*

Q. *As of October 19th?*

A. *Yes.*

Q. *Are you with me so far?*

A. *Yes.*

Q. *At the time Mr. Musk referred to random. You with me so far?*

A. *Yes.*

Q. *You, as of that moment in time, were aware of how the ultimate recipient had been selected; isn't that right?*

A. *Yes.*

Q. *Now, before the event, did you disclose to the public Dreher.*

A. *Dreher.*

Q. *Did you disclose to the public before that announcement how Mr. Dreher was going to be selected?*

A. *No.*

Q. *Did America PAC?*

A. *No.*

Q. *Was it on the website?*

A. *No.*

Q. *Had it issued any press release talking about the criteria?*

A. *No.*

Q. *Was there a writing, a memorandum, internal in AMERICA PAC, that described the process for how this was going to occur?*

A. *No.*

32. Mr. Young went on to testify as to the specific criteria used to select the winners of the \$1 million dollar award:

Q. Now, explain for the Court's benefit how did AMERICA PAC figure out that these four individuals were going to become paid spokespersons for the PAC?

A. Sure. So once I made a determination, which, you know, states, locations, geography, we were going to have these town hall events. I went back to the petition and used the petition like a job application. These people had provided information. I was able to match and see which folks, one, were registered voters. Two, how many were actively referring others. If you went with one referral, or something like that, there was not much of -- if there were five, then so -- each of these people had multiple referrals and they were actively participating in the program. From there, I then went through the process of looking at their social media, looking at their public posts. Each of those folks I met outside of a parking lot. They were standing in line before the town hall to make sure I could feel out their personality, make sure they were personal, they would fit that role well. If they didn't, we wouldn't be interested in hiring them as a spokesperson for the organization for the petition.

33. A closer look at the recipients of the \$1 million prize shows a clear pattern: that the selection is not random, but is a targeted process that eliminates anyone who is not a Republican or vocal supporter of Donald Trump.

34. The first three winners of the America PAC sweepstakes were all registered voters from Pennsylvania. John Dreher, Kristine Fishell and Shannon Tomei were Pennsylvania voters who signed the petition and subsequently announced as winners of the \$1 million prize. *See Fallon Roth, Elon Musk gave \$1 million to three Pennsylvanians for signing his America PAC petition. They'd already voted.* The Philadelphia Inquirer (Oct. 22, 2024 1:00 P.M.)³

35. Despite Mr. Musk's claims that winners would be chosen "randomly," and the instructions from America PAC claiming that this was a nonpartisan giveaway, the first three winners of the America PAC sweepstakes were all registered Republican voters, all of whom had already voted in the November general election. *Id.*

36. All of the winners of the America PAC sweepstakes have either been registered Republicans or have publicly espoused support for the party, despite the rules of the sweepstakes appearing to be nonpartisan.

³ <https://www.inquirer.com/politics/election/elon-musk-petition-sweepstakes-winners-20241022.html> (last accessed November 11, 2024).

37. According to a report by NBC News, “[A]n analysis of the winners shows at least one other similarity: Almost all of them are registered Republicans or appear to be Republican leaning. Nine of the 14 winners so far are registered Republicans, according to state voter rolls. A 10th winner lives in a state that doesn’t allow the public to view party affiliation, but she posts regularly on social media in support of former President Donald Trump. And four others reside in states where voters don’t register to vote with a party affiliation, but one of them posts pro-Trump messages on social media and another describes himself in a video from Musk’s super PAC, America PAC, as a former Democrat. Another of those four said in an interview that he supports Trump and has already voted.” *See* Ben Kamisar, David Ingram, Bruna Horvath, Alexandra Marquez, “*Who are the people winning Elon Musk’s \$1 million daily giveaways?*” NBC News, (Nov. 1, 2024, 5:24 P.M.).⁴

38. These results are antithetical to the rules provided by America PAC and Mr. Musk’s own words, who said that party affiliation doesn’t affect who wins. Mr. Musk wrote on X, “All you need to do is sign the @America petition in support of the Constitutional rights to free speech & bear arms to have a daily chance of winning \$1,000,000! You can be from any or no political party and you don’t even

⁴ <https://www.nbcnews.com/tech/tech-news/are-people-winning-elon-musks-1-million-daily-giveaways-rcna178254> (last accessed Nov. 11, 2024).

have to vote.” Elon Musk (@elonmusk), “All you need to do is sign. . . .” X (Oct. 20, 2024, 7:39 P.M.).⁵

39. The three winners from Michigan have been subjected to Defendants’ selective process, and were not selected randomly. America PAC has awarded the \$1 million prize to Jordan Timmerman from Hastings, Michigan, Jason Cochran from Holland, Michigan, and Ronald Conwell from Clarkston, Michigan.

40. According to the winners’ own posts on social media, it appears that they are aware of the partisan nature of the selection and how it is tied to their support of Donald Trump.

41. America PAC posted a photo of Jordan Timmerman being awarded an oversized check, and Mr. Timmerman appears to be wearing a Donald Trump t-shirt underneath his American flag patterned suit. The post from America PAC states that “Recipients will be selected to earn \$1M as a spokesperson for America PAC.” America (@America) “Jordan from Hastings . . .” X (Oct. 28, 2024, 10:08 A.M.).⁶

42. Once again, the language by America PAC implies a nonpartisan selection by stating that those who sign the petition are eligible, while also belying the true partisan intent. Mr. Timmerman is photographed in America PAC’s post

⁵ <https://x.com/elonmusk/status/1848147035607998575>.

⁶ <https://x.com/america/status/1850902543905202551>.

wearing a Donald Trump shirt, and Mr. Timmerman’s posts on X espouse pro Trump and pro Republican opinions, both before and after he was selected.

43. Jason Cochran posted similar views on X, and on his Facebook profile had a photo of himself with the oversized check from America PAC and the following description in his bio: “Thank you Elon Musk, Thank you Donald Trump, Let’s make the right decision by signing the petition.” Jason Cochran’s Facebook Profile, accessed on November 5, 2024, at <https://www.facebook.com/profile.php?id=61568098470651&mibextid=LQQJ4d>.

44. Ronald Conwell gave a statement to NBC News admitting the partisan nature of the prize selection. When reporters for NBC told him that no Democrats had won the America PAC sweepstakes yet, he stated that it “didn’t surprise him” and he “believes Democrats are not ideologically predisposed to sign Musk’s petition in support of the First and Second Amendments.” *See* Ben Kamisar, David Ingram, Bruna Horvath, Alexandra Marquez, “*Who are the people winning Elon Musk’s \$1 million daily giveaways?*” NBC News, (Nov. 1, 2024, 5:24 P.M.).⁷

45. Not only is the selection process overtly partisan, but America PAC has kept the selection process shrouded in secrecy. America PAC declined to comment when reporters attempted to vet or question the process. *Id.*

⁷ <https://www.nbcnews.com/tech/tech-news/are-people-winning-elon-musks-1-million-daily-giveaways-rcna178254> (last accessed Nov. 11, 2024).

46. Perhaps most ironically of all, Chris Young, the director and treasurer of America PAC, admitted during his testimony in Philadelphia that America PAC made the winners of the \$1 million prize sign nondisclosure agreements, despite the petition pledging support for the First Amendment.

Q. *They couldn't really reveal the truth about how they got the money, right?*

A. *Sounds right.*

47. Mr. Young seemed to indicate that the selection process for the sweepstakes and the true motivations and goals behind the initiative were more than what was revealed by Defendants.

Q. *As of October, at the time of the filing of this lawsuit, the posts on the website don't reveal any information about these spokesmen consulting agreements, right?*

A. *This agreement is not on the website, correct?*

Q. *Or anything like it, correct?*

A. *Sure.*

Q. *And the only people who know about it are people within America PAC, Mr. Musk, and the individuals who signed it, right?*

A. *Sounds right.*

Q. *And America PAC has prohibited them from telling anyone about the fact that they didn't win this by chance, but they won it because they entered into some consulting agreement, right?*

48. Given this new information and admissions by Musk and the PAC's representatives, Musk and the PAC never had any intention of fulfilling the stated opportunity to registered voters like Alvarez and Robbins.

CLASS ALLEGATIONS

49. Alvarez and Robbins bring all claims as a class action pursuant to Fed. R. Civ. P.23 (a), (b)(2), and (b)(3), on behalf of a Class defined as: "All residents of Michigan who signed up for a \$1 million-a-day sweepstakes through the America PAC website."

50. The Class is so numerous that joinder of all members is impracticable. On information and belief, Defendants obtained the personal information of thousands of Class members.

51. There are questions of fact common to the class. The common questions of fact include, but are not limited to:

- a. Whether Defendants presented incomplete details as to the sweepstakes that a reasonable person would have considered material and relied upon in deciding whether to enter the sweepstakes such that they are liable for fraud by omission;

- b. Whether Defendants engaged in conduct or made statements proscribed by the Michigan Consumer Protection Act such that they are liable for damages;
- c. Whether Defendants presented incomplete details as to the sweepstakes that a reasonable person would have considered material and relied upon in deciding whether to enter the sweepstakes; and
- d. The proper measure of damages sustained and the proper measure of restitution recoverable by members of the Class.

52. The claims of Alvarez and Robbins are typical of other Class members.

53. Alvarez and Robbins will fairly and adequately represent and protect the interests of the Class. They have retained counsel competent and experienced in complex class actions.

54. Class certification of all counts is appropriate pursuant to Fed. R. Civ. P. 23(b)(2) because Defendant has acted or refused to act on grounds generally applicable to the Class, making appropriate declaratory and injunctive relief with respect to Alvarez, Robbins and the Class as a whole. They are all entitled to injunctive relief to require Defendants to purge all their personal identifying information.

55. Class certification of all counts is also appropriate under Fed. R. Civ.

P. 23(b)(3) because, inter alia:

- a. The common issues of law and fact substantially diminish the interest of members of the class in individually controlling the prosecution of separate actions;
- b. Many members of the class are unaware of their rights to prosecute these claims and lack the means or resources to secure legal assistance;
- c. There has been no litigation already commenced against the Defendant by the class members to determine the questions presented;
- d. It will obviate the need for unduly duplicative litigation that might result in inconsistent judgments about Defendant's practices;
- e. A Class action can be managed without undue difficulty because the Defendant has regularly committed the violations complained of herein, and is required to maintain detailed records concerning each class member.

COUNT I - FRAUD BY OMISSION

56. Plaintiffs hereby incorporate by reference all preceding paragraphs.

57. Musk and the PAC made incomplete false representations regarding the nature of the opportunity, the method in which winners would be selected and the terms under which the \$1 million would be awarded.

58. Alvarez and Robbins were led to believe that they were going to be participating in an opportunity to win \$1 million by being randomly selected by chance with the only requirements being those listed in paragraph 15 above.

59. Alvarez and Robbins submitted their personal information to America PAC when signed up for the sweepstakes.

60. Musk and the PAC concealed the true nature of the opportunity, method in which the winners would be selected and the terms/conditions under which Plaintiffs, if selected, would be awarded the \$1 million.

61. Musk and the PAC's fraudulent conduct was intentional, willful, and designed to deceive Plaintiffs and others into participating in their program under false pretenses.

62. Defendants knew or should have known that their statements and representations were false, misleading and that individuals such as Plaintiffs would rely on those misrepresentations to sign the petition.

63. Musk and the PAC's false and misleading representations were meant to inflate the interest in their petition and the subject and theme of its support for the Republican candidate for President.

64. Their inducement was targeted to registered voters in swing states with the intent that it would inflate support for their chosen candidate in those states specifically.

65. The award of \$1 million was meant to induce and entice registered voters in those states to sign the petition seemingly with no requirement that the signer was actually a supporter of the Republican Candidate for President.

66. Musk and the PAC knew that the opportunity to win the \$1 million dollar award was not and would not be available as advertised to individuals such as Plaintiffs.

67. Plaintiffs Alvarez and Robbins justifiably relied on Defendants' false representations and assurances to their detriment by providing their personal details in hopes of being randomly selected to win the \$1 million award.

68. Plaintiffs Alvarez and Robbins relied on Defendants' false representations and provided their personal information (i.e., address, cell phone number and e-mail address) indicating their affirmative acceptance of the petition's stated purpose in supporting the First and Second Amendments of the U.S. Constitution.

69. Musk and the PAC exploited Plaintiffs and many others with the promise of a life changing award of \$1 million dollars knowing that they could never have been selected as a recipient of the award.

70. Defendants knew that Plaintiffs would not be considered among the potential pool of recipients as they had preselected and predetermined the winners based on criteria not revealed or known to the public, including Plaintiffs.

71. Plaintiffs Alvarez and Robbins' signatures on the petition were used to inflate the numerical support for Musk and PAC's political views, support for the Republican candidate for President and other conservative themes and views.

72. Plaintiffs Alvarez and Robbins and others were exploited by Musk and the PAC to further their political support of the Republican candidate for President and to obtain Plaintiffs' and the Class's valuable personal information.

73. As a direct and proximate result of Defendants' fraudulent conduct, Plaintiffs have suffered damages.

COUNT II MICHIGAN CONSUMER PROTECTION ACT

74. Plaintiffs hereby incorporate by reference all preceding paragraphs.

75. Plaintiffs relied upon Defendant's description of the sweepstakes selection process and in fact believed the process of awarding \$1 million was random and that they stood a random chance of being awarded the \$1 million. Absent the above, Plaintiffs would not have participated in the process or given their personal information.

76. By not utilizing random drawings or including all of the persons who entered the sweepstakes for awarding the \$1 million dollars, Defendants violated the

Michigan Consumer Protection Act, MCL 445.901 et seq., (“the Act” or “”) and breach of express and implied warranty as to the drawing.

77. For example, but not by way of limitation, Defendants violated MCL 445.903 by use of deception: representing a random selection process when in fact no such process would be, or was, be used.

78. Specifically, Defendants failed to disclose that they were not randomly selecting persons to receive \$1 million dollars, which is a failure to disclose material facts and is actionable under the MCPA, which proscribes “[f]ailing to reveal a material fact, the omission of which tends to mislead or deceive the consumer, and which fact could not reasonably be known by the consumer.” Mich. Comp. Laws § 445.903(1)(s).

79. Plaintiffs reserve the right to amend their complaint as needed or as discovery proceeds to include further subsections of the Act.

80. As a result of Defendants’ violations of the Act, Plaintiffs were harmed and suffered damages, and also request an order to account for and remedy the personal information that Defendants obtained.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demand judgment against Defendants and request that the court order the following relief:

A. For an order declaring that this action is properly maintained as a class

- action and appointing Plaintiffs as representatives for the Class, and appointing Plaintiffs' counsel as Class counsel;
- B. For an order enjoining Defendant from continuing to engage in the unlawful and unfair business acts and practices as alleged herein;
- C. Award Plaintiffs any and all damages available to them as a result of Musk and the PAC's violations of the law
- D. Take corrective action as to the personal information obtained through the sweepstakes, including providing an accounting of the information obtained and uses.
- E. Award Plaintiffs exemplary damages in an amount sufficient to compensate him for exploitation of his personal information and for the fraudulent conduct committed by Musk and the PAC;
- F. Award Plaintiffs all reasonable attorney fees, costs, and expenses incurred in prosecuting this action.
- G. Award Plaintiffs prejudgment and post-judgment interest as allowed by law.
- H. Granting any other relief that this Court deems just and proper.

Dated: November 13, 2024

Respectfully Submitted,

SOMMERS SCHWARTZ, P.C.

By: /s/ Jason J. Thompson

Jason J. Thompson (P47184)
Kevin J. Stoops (64371)
One Towne Square, 17th Floor
Southfield, MI 48076
248.355.0300
jthompson@sommerspc.com
kstoops@sommerspc.com

FEGAN SCOTT LLC
Elizabeth A. Fegan (pro hac vice)
Megan E. Shannon (pro hac vice)
150 S. Wacker Dr., 24th Floor
Chicago, IL 60606
Ph: 312.741.1019
Fax: 312.264.0100
beth@feganscott.com
megan@feganscott.com

Attorneys for Plaintiffs and Class

REQUEST FOR TRIAL BY JURY

Plaintiffs hereby request a trial by jury pursuant to Rule 38 of the Federal Rules of Civil Procedure.

Dated: November 13, 2024

Respectfully Submitted,

SOMMERS SCHWARTZ, P.C.

By: /s/ Jason J. Thompson
Jason J. Thompson (P47184)
Kevin J. Stoops (64371)
One Towne Square, 17th Floor
Southfield, MI 48076
248.355.0300
jthompson@sommerspc.com
kstoops@sommerspc.com

FEGAN SCOTT LLC

Elizabeth A. Fegan (pro hac vice)

Megan E. Shannon (pro hac vice)

150 S. Wacker Dr., 24th Floor

Chicago, IL 60606

Ph: 312.741.1019

Fax: 312.264.0100

beth@feganscott.com

megan@feganscott.com

Attorneys for Plaintiffs and Class